

IN THE SUPREME COURT OF THE STATE OF DELAWARE

ROBERT WAYNE LAYTON,	§
	§ No. 451, 2005
Defendant Below-	§
Appellant,	§
	§
v.	§ Court Below—Superior Court
	§ of the State of Delaware,
STATE OF DELAWARE,	§ in and for Kent County
	§ Cr. ID 0211004521
Plaintiff Below-	§
Appellee.	§

Submitted: February 17, 2006

Decided: April 24, 2006

Before **STEELE**, Chief Justice, **HOLLAND**, and **JACOBS**, Justices.

ORDER

This 24th day of April 2006, upon consideration of the parties' briefs and the record below, it appears to the Court that:

(1) The appellant, Robert Wayne Layton, filed this appeal from an order of the Superior Court denying his motion for modification of sentence as untimely. Layton argues that the Superior Court erred in finding his motion time-barred because the original sentencing order expressly provided that, upon his successful completion of the Key Program, Layton could request Superior Court to review his sentence. Layton contends that he has successfully completed the Key Program; therefore, the Superior Court is obligated to review the merits of sentence modification request.

(2) The State concedes that the Superior Court abused its discretion in finding Layton's motion to be procedurally barred by the 90 limitation period of Superior Court Criminal Rule 35(b). The State requests that this matter be remanded to the Superior Court with instructions to consider the merits of Layton's sentence modification motion. Given the Superior Court's explicit retention of jurisdiction over Layton's sentence, we agree that it was an abuse of discretion for the Superior Court not to consider the merits of Layton's first motion for a sentence modification.

NOW, THEREFORE, IT IS ORDERED that the Superior Court's order, dated August 29, 2005, is hereby VACATED. This matter is REMANDED to the Superior Court for further consideration of Layton's motion for sentence modification consistent with this order. Jurisdiction is not retained.

BY THE COURT:

/s/ Myron T. Steele
Chief Justice